

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB DEPRATU**, on February 19, 2001 at 8:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: Senate Bill 46 Pass as amended 8-1; Senate Bill 446 Pass as amended 9-0; Senate Bill 411 Pass as amended 9-0; Senate Bill 400 Pass as amended 9-0; Senate Bill 351 Indefinitely Postpone 6-3

EXECUTIVE ACTION ON SENATE BILL 46

SENATOR ELLIS MOVED TO RECONSIDER A PREVIOUSLY TABLED MOTION. He explained this bill was brought by the Department of Revenue which put them at a more favorable position regarding collections when wages are garnished. The bill was previously tabled because the department should not be favored over private collectors. HB 254 would take care of private collectors to the tune of 120 days, not 180 days. The amendments would put the state in the same position and allow a coordinating instruction that says if HB 254 is not approved this bill would be void. The two bill are tied together. The question was called to reconsider action. The motion **PASSED** 8-1 with **SENATOR GLASER** voting no.

SENATOR ELLIS MOVED SB 46 AND MOVED THE AMENDMENT.

EXHIBIT (tas41a01) He explained a "writ of execution". The reason the department needed the legislation is they had to go to court and get the writ in order to garnish wages. If there is a judgement against the person, it only holds for a period of time. The process has to be repeated over and over. That is the purpose of this legislation. Under current law it is only one wage period that wages can be garnished. This allows garnishment to occur for a 120 day period.

The question was called on SB 46 as amended. The motion **PASSED** 8-1 with **SENATOR GLASER VOTING NO.** {Tape : 1; Side : A; Approx. Time Counter : 0 - 9}

EXECUTIVE ACTION ON SENATE BILL 446

SENATOR BOHLINGER MOVED THE AMENDMENT. Amendments were distributed. **EXHIBIT (tas41a02)** **SENATOR BOHLINGER MOVED THE BILL.**

Lee Heiman explained the amendment was passed out during the hearing which provided PSC regulation relating to an agreement by a cooperative.

SENATOR ELLIS noted the amendments were not necessary because contract law requires that any conditions are binding upon the purchaser, therefore they can't abridge a contract by selling the business.

SENATOR ELLINGSON said he had a technical concern about the amendment. It provides that the commission may enforce all representations of the parties. When you are in a negotiating situation, parties are representing all kinds of things. Some are customary, some exaggerations such as what a good deal they will get if they enter into an agreement. He said he did not know how the Public Service Commission could be given the

authority to enforce all the representations unless they were reduced to the conditions that were imposed. This would be a better amendment if you struck "representations of the parties" and simply left it with the conditions that are imposed by the PSC. **{Tape : 1; Side : A; Approx. Time Counter : 9 - 13.5}**

SENATOR ELLIS MOVED THIS AS A SUBSTITUTE MOTION. Mr. Harrison pointed out this was not the law when the PSC considered the application to Spring Creek Coal as there were no conditions in the document. **SENATOR STONINGTON** pointed out if this were put into law today that affected a contract made prior to today, it would need a retroactive clause. Mr. Harrison said this was about legislative intent. He asked if it was legislative intent 2 and 4 years ago, to leave the PSC with some control. If you reexamine that now, the argument will be made that the Legislature clarified that. The concern he had was whether the Legislature took the issue up again and said the PSC had no continuing authority. This is a consistent position the parties to this contract have taken, that there is no authority over this contract. **{Tape : 1; Side : A; Approx. Time Counter : 13.5 - 18.7}**

SENATOR ELLINGSON asked if the representations referenced were to the continuing price level that Spring Creek was used to. Mr. Harrison replied this referenced third party concerns. They were not the buyer and not the seller but were representations made by one or both of them that affected the public as a whole, one of which was his client. Flathead Electric did make the representation to Spring Creek regarding the prices they could get electricity and made it to the PSC as well. **SENATOR ELLINGSON** said the PSC issued the order approving the sale but didn't impose a condition with respect to that particular representation. Mr. Harrison replied that there was a legal argument as to whether there were conditions. The PSC has proceeded as if there were conditions but they are not denominated as conditions. **SENATOR ELLINGSON** said the PSC right now is acting as though Flathead Cooperative made certain promises and it appears as though you are asking the PSC to enforce those promises. Mr. Harrison replied that his client had not asked for anything or entered into the PSC docket at all. These representations were made to all consumers regarding rate hikes, no transition fees, etc.

SENATOR ELLIS commented that he would like to hear both sides before making a decision. He said that retroactivity would be a bad precedent.

SENATOR COLE asked if another word would make the amendment work. He said he would like to see the Spring Creek issue resolved.

SENATOR ELLINGSON suggested using the language "the commission may enforce all representations on the parties upon which the commission relied in approving the purchase." It means the representations that were made to the commission and whether they were included in their formal conditions or not is part of the record in front of the Public Service Commission. **{Tape : 1; Side : A; Approx. Time Counter : 18.3 - 24.7}**

The question was called on **SENATOR ELLIS'S SUBSTITUTE MOTION**. The motion **FAILED** unanimously.

SENATOR ELLINGSON MOVED HIS SUBSTITUTE MOTION. The first sentence would read "the commission may enforce all representations of the parties upon which the commission relied in approving the purchase and conditions placed."

The question was called on the substitute motion. The motion **PASSED** unanimously.

SENATOR BOHLINGER MOVED THE BILL AS AMENDED. The motion **PASSED** unanimously. **{Tape : 1; Side : A; Approx. Time Counter : 24.7 - 28.5}**

EXECUTIVE ACTION ON SENATE BILL 411

SENATOR ELLIS MOVED THE BILL. Lee Heiman explained the amendment. **SENATOR ELLIS MOVED THE AMENDMENT**. **EXHIBIT(tas41a03)** The question was called. The amendment was **ADOPTED** unanimously.

CHAIRMAN DEPRATU explained the amendment related to the fiscal note that would effect 200 pumps and the cap would be \$500. He noted that **Mr. Allen**, President of Allen Oil in Helena, indicated he could change a pump over for about \$1,000. The question was called on the amendment. The amendment was **ADOPTED** unanimously.

SENATOR EKEGREN MOVED THE AMENDMENT. **EXHIBIT(tas41a04)** The question was called. The amendment was **ADOPTED** unanimously.

SENATOR STONINGTON MOVED THE BILL AS AMENDED. **SENATOR GLASER** pointed out this would come out of the State Special Revenue Fund which would affect the federal matching money that is used to finance road construction. **SENATOR COLE** discussed the problem of getting the ethanol product shipped into the state from Canada or Nebraska since there is no processing plant in Montana. **CHAIRMAN DEPRATU** pointed out even a little of the product available would encourage those financing the plant in Montana. There are a few stations with ethanol available.

The question was called on the bill as amended. The motion **PASSED** unanimously. {Tape : 1; Side : B; Approx. Time Counter : 0-9}

EXECUTIVE ACTION ON SENATE BILL 400

SENATOR ELLIS said he had a problem with repair and maintenance during the hearing. It is difficult sometimes knowing what is construction and what is maintenance. If counties or cities are allowed to bond to do repair and maintenance we complicate the problem with the taxpayer. Then they have even less money to operate on later when the revenues from fuel taxes come in because they have to pay the interest on the bonds. **SENATOR STONINGTON** asked if local government could use their geo bonding authority on road construction. **Lee Heiman** replied that they could use that authority to do that but this is gas tax revenue. **CHAIRMAN DEPRATU** said it would be better to take out the repair and maintenance. He said if the word "reconstruction" was added it would give a little flexibility.

SENATOR ELLIS MOVED THE AMENDMENT. The motion was **ADOPTED** unanimously.

SENATOR STONINGTON said she thought that gas taxes were collected from state governments. **CHAIRMAN DEPRATU** replied there was a formula and a portion of the gas tax goes back to local governments and it is on an allocation basis, based on miles in the county or city and population. **Lee Heiman** said this was stipulated for road and bridge work. It can be repair, maintenance and construction. **SENATOR STONINGTON** clarified this bill would allow a bigger chunk of money through bonding to do work now and pay back with those monies in the future.

SENATOR ELLIS asked if this would take care of the problems in the bill. **SENATOR GLASER** replied that it did not. This bill would deal with statute 15-70. The bill, unless amended additionally, would lock in everything in the section and then it could not be changed. The reason you can't change it is because if one local government says they were going to bond the money, and it is bonded to that revenue stream it will lock it in forever. He said one suggestion was to allow use of the revenue stream, the bonding authority could be changed but not the revenue stream. **Lee Heiman** clarified that Section 2 of the bill, beginning on page 2, line 29, is the provision that says that the Legislature would continue to levy. If that section is reversed, that says the Legislature is not bound to continue the levy and strike most of the end of the section so that anybody who goes

into this, goes into it with their eyes open knowing that it is just a local bond issue.

SENATOR GLASER MOVED TO ADOPT THE CONCEPTUAL AMENDMENT.

EXHIBIT (tas41a05) The question was called. The amendment was **ADOPTED** unanimously.

SENATOR GLASER MOVED THE BILL AS AMENDED. The motion **PASSED** unanimously. *{Tape : 1; Side : B; Approx. Time Counter : 12.9 - 28}*

EXECUTIVE ACTION ON SENATE BILL 351

SENATOR ELLINGSON MOVED DO PASS. **SENATOR GLASER** pointed out property taxes were not distributed evenly across the state. When some are exempted, it will devastate some of the districts that have reliance. This effects city and county governments. In a small county, when you take out some class A property, they don't have anything left.

SENATOR STONINGTON commented that in the last five years the Legislature has financially crippled the state by tax reform policy. She stressed the importance of addressing the revenue base. *{Tape : 2; Side : A; Approx. Time Counter : 0 - 5}*

SENATOR ELLIS said it was a matter of equity. The taxes at 12% in 1980 were high and some of the businesses are still paying that rate. Airlines and railroad property are still paying 12%. Those still paying the higher rates are the businesses that are notorious for paying good wages. Then we tax them higher. We tax the people who send the kids to school, who incur most of the costs.

SENATOR BOHLINGER described the tax reduction last Session that reduced the tax on Class 8 properties. The thought was to make our taxes comparable to neighboring states, thereby making Montana competitive and encourage businesses to locate in Montana. It is important to measure results to see if there has been job growth. However, the time frame for this examination is a little further out. We realize that we cannot generate enough revenue through our present tax system to fund all the functions of government. He felt a state wide sales tax would be appropriate in order to fund those things we believe in. He said he would reject the idea of a look back and put it off for a few years.

SENATOR COLE said he agreed. **HE MOVED TO TABLE SB 351.** **SENATOR HARRINGTON** commented that 400-500 teachers would be laid off, not

just leaving the state. He said there were serious problems happening and therefore he was going to support this bill. He noted that talk of a sales tax had been going on since 1977.

SENATOR ELLINGSON thanked the committee for allowing the discussion. He pointed out that by cutting taxes we also needed to look at the importance of supporting needed services. *{Tape : 2; Side : A; Approx. Time Counter : 4 - 13.3}*

The question was called. The motion **PASSED** 6-3 with **SENATORS STONINGTON, ELLINGSON AND HARRINGTON VOTING NO.**

SENATOR COLE MOVED TO INDEFINITELY POSTPONE SB 351. The motion **PASSED** with **SENATORS ELLINGSON, STONINGTON AND HARRINGTON VOTING NO.** *{Tape : 2; Side : A; Approx. Time Counter : 13.3 - 21}*

ADJOURNMENT

Adjournment: 9:18 A.M.

SEN. BOB DEPRATU, Chairman

DEB THOMPSON, Secretary

BD/DT

EXHIBIT (tas41aad)